UNITED
NATIONS

S

Security Council

PROVISIONAL

S/PV.2907
9 February 1990

ENGLISH

PROVISIONAL VERBATIM RECORD OF THE TWO THOUSAND
NINE HUNDRED AND SEVENTH MEETING

Held at Headquarters, New York,
on Friday, 9 February 1990, at 10.30 a.m.

President:	Mr. ALARCON DE QUESADA	(Cuba)
Members:	Canada	Mr. FORTIER
	China	Mr. LI Luye
	Colombia	Mr. PEÑALOSA
	Côte d'Ivoire	Mr. ESSY
	Democratic Yemen	Mr. AL-ASHTAL
	Ethiopia	Mr. TADESSE
	Finland	Ms. RASI
	France	Mr. DE LA SABLIERE
	Malaysia	Mr. RAZALI
	Romania	Mr. MICU
	Union of Soviet Socialist Republics	Mr. BELONOGOV
	United Kingdom of Great Britain and Northern Ireland	Sir Crispin TICKELL
	United States of America	Mr. WATSON
	Zaire	Mr. LUKABU KHABOUJI N'ZAJI

This record contains the original text of speeches delivered in English and interpretations of speeches in the other languages. The final text will be printed in the Official Records of the Security Council.

Corrections should be submitted to original speeches only. They should be sent under the signature of a member of the delegation concerned, within one week, to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

90-60305/A 6508V (E)

The meeting was called to order at 10.55 a.m.

EXPRESSION OF THANKS TO THE RETIRING PRESIDENT

The PRESIDENT (interpretation from Spanish): As this is the first meeting of the Security Council for the month of February, I should like to take this opportunity to pay tribute, on behalf of the Council, to His Excellency Mr. Amara Essy, Permanent Representative of Côte d'Ivoire to the United Nations, for his service as President of the Security Council for the month of January 1990. I am sure I speak for all members of the Security Council in expressing deep appreciation to Ambassador Essy for the great diplomatic skill and unfailing courtesy with which he conducted the Council's business last month.

ADOPTION OF THE AGENDA

The agenda was adopted.

LETTER DATED 2 FEBRUARY 1990 FROM THE PERMANENT REPRESENTATIVE OF CUBA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL (S/21120)

The PRESIDENT (interpretation from Spanish): The Security Council will now begin its consideration of the item on its agenda.

I should like to draw the attention of members of the Council to the following documents: S/21121, letter dated 3 February 1990 from the Permanent Representative of Cuba to the United Nations addressed to the Secretary-General; S/21122, letter dated 3 February 1990 from the Acting Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General; and S/21127, letter dated 5 February 1990 from the Chargé d'affaires of the Permanent Mission of Panama to the United Nations addressed to the Secretary-General.

(The President)

As members of the Council are aware, the Council is meeting in response to the request contained in the letter dated 2 February 1990 from Cuba, document S/21120, concerning an incident that directly involved the interests of the United States of America and Cuba. I should like to draw the attention of members of the Council to rule 20 of the provisional rules of procedure of the Security Council, which reads as follows:

"Whenever the President of the Security Council deems that for the proper fulfilment of the responsibilities of the presidency he should not preside over the Council during the consideration of a particular question with which the member he represents is directly connected, he shall indicate his decision to the Council. The presidential chair shall then devolve, for the purpose of the consideration of that question, on the representative of the member next in English alphabetical order, it being understood that the provisions of this rule shall apply to the representatives on the Security Council called upon successively to preside. This rule shall not affect the representative capacity of the President as stated in rule 19, or his duties under rule 7."

The Council will note that this provision places the matter entirely within the discretion of the President. I have looked at the precedents which might apply on this occasion. These show that Presidents of the Security Council have not made it a habit to vacate their seats because the Council was considering questions with which their Governments were directly concerned. In fact, I have found only two precedents in the Council's practice over the past 25 years, both having to do with the presidency of the United Kingdom of Great Britain and Northern Ireland.

In spite of all the precedents to the contrary, I have decided that it would be appropriate for me to exercise the discretion given to the President under rule 20 and to vacate the Chair while this item is being discussed. I trust the

(The President)

Council will agree with me that this is the fair and proper way to proceed. Consequently, in accordance with rule 20, I invite the representative of Democratic Yemen to take the presidential Chair for the purpose of the consideration of the item on our agenda today.

Mr. Al-Ashtal (Democratic Yemen) took the Chair.

The PRESIDENT (interpretation from Arabic): I should like first to extend a personal welcome to Mr. Ricardo Alarcon de Quesada, the new Permanent Representative of Cuba to the United Nations, as he has for the first time assumed the presidency in a formal meeting of the Security Council. Mr. Alarcon de Quesada represented his country at the United Nations for 11 years. I should also like to add my voice to the President's words of thanks to Mr. Amara Essy, who presided over the Council's deliberations last month, assuming that role, I should note, on the first day of his country's presence as a member of the Security Council. I should also like to thank all the delegations that have welcomed Democratic Yemen to the Council and to assure them of our full co-operation with them during the next two years.

I assume the function of President of the Security Council. I call on the first speaker, the representative of Cuba.

Mr. ALARCON DE QUESADA (Cuba) (interpretation from Spanish): On behalf of my delegation, I should like first to pay a tribute to Ambassador Amara Essy, Permanent Representative of Côte d'Ivoire, for the efficiency and skill with which he conducted the proceedings of the Council during the month of January. We should also like to express our gratitude to you, Mr. President, for having assumed the presidency of the Council for the consideration of this item, and we are sure that our proceedings will be conducted with the wisdom and skill we all know you to possess. I wish also to express gratitude for the kind words you have just extended to us.

READEX FICHE

(Mr. Alarcon de Quesada, Cuba)

From time immemorial the Caribbean and the Gulf of Mexico have been areas of ceaseless struggle of the peoples of that region in defence of their independence and dignity. The history of the Antilles and of the other peoples of the Caribbean basin was forged under the hardships created by foreign Powers that made our seas prey to plundering, violence and unlawfulness. In the words of a famous Antillean writer, the Caribbean was the "imperial frontier", the place where for centuries all the colonial Powers not only invaded our lands and fought with their navies on our seas but also infested those waters with pirates and privateers and every kind of outlaw, with or without official sanction.

In those days the powerful of the earth believed that they had a special right to dominate our region and that they were somehow entitled to humiliate and subjugate its peoples. Then times began to change. There began to emerge independent nations and a system of international relations based on legal norms, reaching highest expression in the San Francisco Charter and the founding of this Organization, which, inter alia, drew up principles and legal norms to govern relations among States and the conduct of States on the high seas outside their jurisdiction.

(Mr. Alarcon de Quesada, Cuba)

None the less, today's circumstances are very special. There are signs that could indicate the possibility of détente, including co-operation, in relations among some States. Steps - whose importance we cannot ignore - are being taken to avoid confrontation between the great Powers and eliminate the threat of nuclear war. Many see in these achievements the promise of better times for peaceful coexistence among nations. But others, in the third world, see instead a series of questions about the future that seems to be taking shape. Will all share in the peace that is coming about in certain regions and among certain countries? Will this possible new order meet the demands for independence and development of the peoples that form the vast majority of mankind?

Many of the factors of today's situation show why the peoples of the third world cannot adopt Panglossian attitudes. The Security Council has recently considered some of these, which once again demonstrated the limits of the Council's effectiveness.

The facts I bring to the Council today fall in the framework of that same seemingly contradictory situation. After taking over Panama again - as though we had regressed to the beginning of the century - the Government of the United States is deploying fleets of warships throughout the Caribbean; it is threatening the sovereignty of the States of the region and is attempting to exercise authority over an area which does not belong to it and over which it has no jurisdiction whatsoever.

The facts speak for themselves. A peaceful civilian vessel engaged in normal commercial activities, belonging to a Panamanian firm and leased by a Cuban firm, with a Cuban crew on board, was making - as it does regularly - its crossing between the Cuban port of Moa and the Mexican port of Tampico. As would be obvious to anyone who knows anything about geography, its course never neared waters even adjacent to those over which the United States could have any responsibility. No

(Mr. Alarcon de Quesada, Cuba)

one in the United States or elsewhere had ever lodged any complaint, charge or accusation against the vessel, its captain or its crew. Between the time it left Cuban territory and the time it entered Mexican territory, the vessel remained in international waters at all times.

On 29 January, still in the Gulf of Mexico, the Hermann was harassed by a United States military aircraft; from the morning of 30 January it continued to be threatened all day, and was attacked by a United States Coast Guard unit. We can only wonder what United States coast was being guarded by these United States vessels at the far end of the Gulf of Mexico. The fact is that hundreds of miles outside United States territory a United States warship harassed the Hermann, attempted to board it and finally fired on it for one hour and 45 minutes with machine-guns and other weapons, with the clear purpose of disabling and sinking a merchant vessel engaged in lawful activity in international waters. What is the difference between that reprehensible action and those of the buccaneers of the old pirate days - unless it is that the pirates of yore showed less contempt for the lives of others and were more inclined to risk their own? Is it an extenuating circumstance that today's pirates do their craven deeds protected by armoured ships, helmets and bullet-proof vests and using automatic weapons for their attacks?

We must highlight the inhuman behaviour of the Coast Guard crew, who had plenty of time to confirm that they were attacking a peaceful, unarmed vessel unable to return fire but nevertheless directed fire at the vessel and its crew for nearly two hours unabated. It is also worth noting that at its height the attack was taking place near Mexican oil facilities: the Coast Guard's vandalism could have caused a catastrophe with the most serious environmental consequences that could have threatened one of Mexico's valuable natural resources.

(Mr. Alarcon de Quesada, Cuba)

It is clear that responsibility lies fully with the Government of the United States. Officially and publicly the Washington authorities themselves acknowledged that it was they who issued the order to harass and attempt to assault, attack and sink the merchant vessel Hermann. We must suppose that the Government of a great nuclear Power adopts a certain degree of seriousness when it takes decisions, and must therefore conclude that the decision to use armed force against a peaceful vessel on the high seas was not taken at the level of secondary bureaucrats, but was the subject of consultation and decision in the highest Government organs.

Several hours before they gave the order to fire on the Hermann, those authorities were directly informed in Washington and Havana of our readiness to have the vessel properly inspected by Mexican authorities; they were also told that if it was in the interest of the United States authorities they could co-ordinate their activities in that respect with the Mexican authorities. The facts have shown that this was a serious, responsible and constructive offer made simultaneously to the Government of our fraternal neighbour.

But what happened then? About five hours after hearing our proposal, Washington gave the order to open fire on the Hermann; firing did not stop until an hour and three quarters later, when our vessel had already reached Mexican territorial waters. Minutes later, Mexican navy units arrived on the scene; they immediately inspected the vessel and escorted it to the port of Tampico, where a second, meticulous inspection took place. As the Mexican authorities officially announced, there was not the slightest sign of drugs or any other illegal substance on the Hermann.

What more needs to be said? Despite the false, provocative and offensive nature of the Yankee suspicions, Cuba proposed a formula that could have avoided the incident and that showed our genuine willingness to fight drug trafficking.

(Mr. Alarcon de Quesada, Cuba)

As always, Mexico demonstrated responsibility and a real sense of international co-operation that deserve our gratitude. For its part, the United States clearly demonstrated that its actions had nothing to do with suppressing illegal traffic in drugs, but was solely and exclusively an insolent and provocative attempt to impose an illegal claim: that they own the high seas.

(Mr. Alarcon de Quesada, Cuba)

In this action the United States Government flagrantly violated the United Nations Charter, prevailing international norms governing freedom of navigation and the régime governing the high seas and the protection of persons at sea, and it also disregarded important declarations and resolutions of the General Assembly relating to peaceful coexistence among States. It committed the crimes of piracy and State terrorism.

Those who have so flagrantly transgressed the principles of law do not show much respect for logic or common sense either. Thus they do not think twice about attempting to justify their conduct with arguments which, if we leave aside for the moment the intrinsic gravity of the facts, would seem to be explanations worthy of a poor joker.

According to United States logic, those responsible for the incident were the Cuban Government and the ship's captain - the Cuban Government because it defended the principle of freedom of navigation and upheld the just decision of the captain and his crew not to submit to the illegally claimed right of the United States, and because it offered a reasonable, constructive formula to end the incident. According to this rather peculiar line of reasoning, the captain and his crew were guilty because they did not allow themselves to be humbled by the aggressor's fire or arrogance but valiantly resisted; because they did not allow their ship to be sunk; and because they were able, in spite of everything, to take the ship into the port for which it was headed.

To sum up, according to the singular reasoning of the United States side, blame for the incident lies with Cuba because it did not make it easier for Washington to carry out an entirely illegal action that was unjustified and arbitrary - curious behaviour for a State that has started a number of wars, adducing as justification precisely this kind of alleged violation by others of the principle of freedom of navigation.

(Mr. Alarcon de Quesada, Cuba)

The decision of the captain of the Hermann to refuse to allow his ship to be inspected by the United States Coast Guard was fully justified: apart from the Coast Guard's having no grounds, justification or legal foundations for such an inspection, who could seriously believe in the objectivity or integrity of an inspection carried out by such inspectors? How can it be doubted that this was in fact fundamentally an act of provocation and nothing more? If the intention was not dishonest and provocative, why did the Washington Government not agree to the inspection's being carried out by the Mexican authorities? Who told Washington that international co-operation should be carried out at gunpoint?

Denuded, as it is, of any legal justification, or even any reasonable explanation, the United States uses an argument that sounds like a joke. The conduct of the United States was authorized, no more and no less, by what it describes as the Panamanian authorities. For that reason, it circulated a communication hastily worked out and signed by someone presented to us as if he were the Consular Director-General of Shipping in that country. We would have to see if that letter was dictated by this so-called director or by some United States general of the occupying military forces that have governed Panama for a month and a half now. Neither the generals in the Pentagon nor the Panamanian beaurocrat have any idea of the laws and regulations of that country.

To illustrate this, we are distributing to the Council a copy of the official text of Law No. 2, of 17 January 1980, which governs the rights and functions of this gentleman. As can be seen, no one authorized him to do what it is being suggested he did. Members of the Council will have an opportunity to examine the Panamanian law whereby the office of the Director-General of Shipping was set up, and they will see in considerable detail the rights and functions of that official. From this text it is more than clear that that functionary and that office have authority only to issue written instructions, to impose fines or to

(Mr. Alarcon de Quesada, Cuba)

cancel a ship's registration, and in the three cases it is explained that the law provides for an appeals procedure and possible arguments by the affected party. That conclusion could be reached in a matter of minutes. Article 20 of the law specifies to what extent the detention of ships can be ordered by the Director. This can happen only in two kinds of case: whatever violations of these laws and regulations are committed at sea, and the prevention of pollution of the marine environment. It does not, however, appear that that official has any power to order the boarding of, or an attack upon, a ship flying the Panamanian flag. Quite the contrary: it is, according to paragraph 6 of article 2 of the Panamanian law, one of his obligations to see to it that no actions are taken to effect actions taken against ships flying the Panamanian flag. I need not say that nowhere in the Panamanian legislation is the official given authority to communicate with or to arrive at agreements with other States. In this regard we are also sending members copies of public statements issued after the incident by two gentlemen identified by news agencies as the current Minister and Deputy Minister of Foreign Relations of Panama, from which I shall now quote:

> "The Panamanian Foreign Minister, Julio Linares, said today that he has no official knowledge of the facts concerning the United States attack upon a Cuban merchant ship under his flag."

Those are the words of a news agency. And this, verbatim, is what Mr. Linares said:

> "A couple of days ago I learned of a request that had been made, but I have no knowledge of the details of this event."

Mr. Linares was speaking at a press conference. The report continues:

> "The Foreign Minister gave the floor to the Deputy Foreign Minister, Juan Castulovich, who pointed out that the main question was that reflected in international cables, because that information did not reach the Foreign Ministry."

(Mr. Alarcon de Quesada, Cuba)

It is obvious that the letter reproduced in document S/21127 is nothing but a crude attempt to confuse the Council. Among the powers vested in Mr. Marquez - the official who signed that letter as Director of the Consular and Shipping Department of the Ministry of Finance and Budget of Panama - never figured the power to ask anyone what we are meant to believe he requested. Members of the Council will have noted too that his letter, containing the supposed authorization, was dated 30 January 1990, when the Americans had already been harrassing the Hermann and trying to board it for 24 hours. Further, Panamanian law, as is the case in most countries, entrusts the Foreign Ministry with the responsibility of communicating with other States, and in the case we are dealing with the main officials in charge of that office, in the very régime installed there by the United States, not only did nothing but also claimed to have no knowledge of what had happened.

In fact, no agreement exists between Panama and the United States that can be advanced to justify the action undertaken. Furthermore, any agreement in that regard, if it is to be valid, would have to be in keeping with prevailing international norms and not in contravention of them.

In the circumstances, it is clear that the alleged Panamanian authorization neither existed nor indeed could exist. What is more, strictly speaking such authorization could not even be requested or granted. The fact that the authorities, legitimate or otherwise, of two States agreed to contravene the norms of international law cannot confer any legality upon their actions. A crime shared is still a crime. Association in the committing of a crime does not convert that crime into a legitimate act.

The 1958 Geneva Convention on the High Seas states in article 22, paragraph 1:

"Except where acts of interference derive from powers conferred by treaty, a warship which encounters a foreign merchant ship on the high seas is not justified in boarding her unless there is reasonable ground for suspecting:

(Mr. Alarcon de Quesada, Cuba)

"(a) That the ship is engaged in piracy; or

"(b) That the ship is engaged in the slave trade; or

"(c) That though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship". (United Nations, Treaty Series, vol. 450-7, No. 6465, article 22)

What I have just read out is the prevailing norm that is binding on the United States, Panama and other States. Since the United States has not received any additional powers under any treaty, and because the three elements mentioned in the article I have cited have no relationship of any kind with the case before us, there cannot be the slightest doubt that the United States authorities are in flagrant violation of the Geneva Convention.

Trying in vain to overlook that basic requirement, the representatives of the United States have resorted to an instrument that has not yet come into force - the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. But even that it uses in a capricious fashion. They select parts of article 17 of that Convention, but forget, for example, the stipulation of paragraph 5 of that article 17, which I quote:

"Where action is taken pursuant to this article, the Parties concerned shall take due account of the need not to endanger the safety of life at sea, the security of the vessel and the cargo or to prejudice the commercial and legal interests of the flag State or any other interested State". (E/CONF.82/15, p. 24)

They also overlook what is stipulated in paragraph 11 of that same article:

"Any action taken in accordance with this article shall take due account of the need not to interfere with or affect the rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea" (ibid., p. 25).

(Mr. Alarcon de Quesada, Cuba)

They also disregard what is laid down in paragraph 1 of article 17:

"The parties shall co-operate to the fullest extent possible to suppress illicit traffic by sea, in conformity with the international law of the sea". (ibid., p. 23)

After a careful search through article 17 and elsewhere in the Convention, I have found no paragraph that would make any exception for the Government of the United States giving it the right to interpret or legislate on international maritime law in its own way.

Indeed, the United States endangered the life of the crew of the Hermann and the safety of the ship and its cargo, and acted in a way prejudicial to the legitimate interests of Cuba. Furthermore, the United States assumed powers that belong to the coastal State and even disregarded Cuba's proposal that that State, Mexico, should carry out the inspection of the ship.

Moreover, the new United Nations Convention on the Law of the Sea lays down principles and norms that cannot be disregarded, for example article 88, which states: "The high seas shall be reserved for peaceful purposes"; or article 89, which states: "No State may validly purport to subject any part of the high seas to its sovereignty"; or the regulations on the right of visit contained in article 110, which nowhere mention the pretext alleged by the United States; or article 111, which clearly limits the right of hot pursuit to coastal States.

It seems unnecessary to provide additional facts to prove that the United States grossly flouted the principles and norms of international law. The Government of the United States was perfectly well aware that the Hermann was the property of a Panamanian firm, that it had been chartered by a Cuban firm, and that it was engaged in entirely legitimate commercial activities that had no connection whatsoever with drug trafficking. The Government of the United States has fabricated this entire incident out of whole cloth as part of its arrogant,

(Mr. Alarcon de Quesada, Cuba)

interfering and aggressive policy in a part of the world which it intends to go on treating as if it were its own backyard. That policy constitutes a clear threat to international peace and security, and consequently it is the Council's duty to take the necessary decisions to put an end to it.

In any case, the Revolutionary Government of Cuba is not ready to recognize to the United States the right to practise piracy, nor will Cubans allow themselves to be intimidated by imperialist arrogance. With valor, firmness and the determination to resist, the crew members of the Hermann were able to thwart the provocative act of the United States. In that way, they were defending the principles of law and do their duty.

What remains to be ascertained is whether members of the Council will also defend those principles and do their duty.

The PRESIDENT (interpretation from Arabic): I thank the representative of Cuba for the very kind words he addressed to me.

Mr. WATSON (United States of America): The United States delegation is pleased to welcome you, Sir, to the presidency of the Security Council, albeit temporarily. My delegation also welcomes the representative of Cuba to the presidency of the Security Council for this month. I wish to assure both Presidents of our full co-operation.

I wish also to take this opportunity to express our gratitude to Ambassador Essy, Permanent Representative of Côte d'Ivoire, for his very skilful and efficient management of the presidency during the month of January.

My Government strongly disagrees with the Government of Cuba that a routine drug-interdiction case merits Security Council consideration. This type of operation is standard and frequent and an essential component of the battle against international narcotics traffickers. It was Cuba that violated international law by ordering a Cuban crew to resist lawful inspection. Moreover, the Cuban Government's obstruction of such an inspection calls into question Cuba's publicly stated commitment to fight drug trafficking.

We all are aware that the urgency of international co-operation against drug trafficking was one of the salient themes throughout the forty-fourth session of the General Assembly. President Bush stated during his address that

> "Illegal drugs are a menace to social order and a source of human misery wherever they gain a foothold. The nations which suffer this scourge must join forces in the fight ...". (A/44/PV.4, p. 58)

And, highlighting the importance of the struggle against drugs in this hemisphere, President Bush continued

> "Let me salute the commitment and extraordinary courage of one country in particular: Colombia, where we are working with the people and their

(Mr. Watson, United States)

President, Virgilio Barco, to put the drug cartels out of business and bring the drug lords to justice". (ibid., pp. 58-60)

It was President Barco himself who, in his moving address to the forty-fourth General Assembly session, likened the war against drug traffickers to a world war requiring a global commitment. He called for prompt ratification of the 1988 United Nations Convention against illicit traffic in narcotic drugs, which, as we shall shortly see, provides specifically for the type of inspection the United States Coast Guard attempted to make in the case before us.

Inspections are an entirely routine and normal law-enforcement procedure on the high seas, and they are a major component of United States efforts to combat the extensive drug trafficking in the Caribbean. Over the past 10 years the United States Coast Guard has carried out approximately 350,000 boardings - all with the consent of the flag State, of course, and the overwhelming majority with the consent of the vessels' masters. In fact, over the past 10 years the Coast Guard has used force to board vessels on only 18 occasions, of which five vessels flew the United States flag, seven were stateless and six flew the flag of another State. On every one of those 18 occasions illicit narcotics were found. In none of those 18 occasions was anyone killed or seriously injured. It is worthy of note that, as Fidel Castro himself observed publicly a week ago, the United States has searched Panamanian-flag vessels with Cuban crewmen on other occasions and the Cuban Government has raised no protest. It is hard to understand, then, why his Government would deliberately violate international law and provoke an incident in the case of the Hermann.

At this point I wish to describe for the Council the facts of this maritime narcotics interdiction case, facts which have already been fully conveyed to the Government of Cuba along with a request for an explanation of Cuba's unusual behaviour in this incident.

(Mr. Watson, United States)

The United States Coast Guard cutter Chincoteague encountered the Hermann, a 250-foot coastal freighter registered under the Panamanian flag and home ported in Panama, in international waters in the Gulf of Mexico on the morning of 30 January.

The Hermann fit the profile of a drug-smuggling vessel. Specifically: Searches of vessels proceeding along the same route towards Tampico as the Hermann recently had yielded illegal narcotics. In fact, just a few months ago, in October of last year, the Coast Guard, with the consent of the Government of Panama, boarded a Panamanian-flag vessel in the same area and found six tons of cocaine on board - the largest maritime seizure ever by the United States. When the Chincoteague asked the master of the Hermann to permit routine boarding and inspection, the master of the Hermann refused consensual boarding, claiming that he did not want to slow down. When the Coast Guard cutter informed him that the Hermann would not have to alter course or speed for boarding, he continued to deny consensual boarding. The master's answers to questions were suspicious in that they were unusually brief and evasive. Asked the nationality of his crew, he refused to respond. The master claimed he had no cargo on board, but the Hermann was low in the water and its load lines had been altered in violation of international law. Vessels used for drug smuggling often have their load lines raised illegally to make it appear they are unloaded when in fact they are carrying cargo and lying lower in the water.

Under those circumstances the United States authorities had ample reason to suspect the Hermann was engaged in smuggling drugs. The Chincoteague therefore steamed alongside the Hermann while asking Coast Guard headquarters to request from the Panamanian authorities confirmation of registry and authorization to board. Seven hours after the initial encounter the flag State, Panama, confirmed its registry of the Hermann and gave its permission to the United States Government to board the vessel.

(Mr. Watson, United States)

The representative of Cuba has referred to certain press despatches concerning the alleged attitude of the Panamanian Government. In this regard I simply note the 5 February letter addressed to the Secretary-General from the Alternate Representative of Panama that is before us today. The Chincoteague advised the master of the Hermann the flag State had authorized the Coast Guard to board and inspect. The Hermann's master, in flagrant defiance of international law and the authority of the flag State, refused to comply with the Chincoteague's request.

Under the international law of the sea, the nation under whose flag the vessel is sailing enjoys exclusive jurisdiction over that vessel on the high seas, unless it chooses to extend jurisdiction to another nation. In this instance the Government of Panama granted its permission to the United States Coast Guard to board and inspect the Hermann.

The Chincoteague at this point asked Coast Guard headquarters to request permission from the Panamanian Government to use disabling fire. This permission was granted by the Government of Panama. Only after obtaining authorization from the appropriate United States and Panamian authorities did the Chincoteague advise the Hermann that it would use necessary force to board the vessel if the master refused to comply voluntarily.

It is important to note that the United States became aware of Cuban involvement only after the order to use disabling fire had been issued. The Cuban Government informed the United States Interests Section in Havana that the crew was Cuban and asserted that the vessel should be allowed to continue unimpeded.

(Mr. Watson, United States)

United States authorities advised the Government of Cuba that they would defer enforcement action for several hours so as to allow the Cuban authorities to instruct their nationals aboard the vessel to co-operate with this lawful exercise of authority pursuant to the instructions of the flag State. Cuban authorities then inexplicably ordered the civilian crew of the Hermann to resist any attempts by the Coast Guard to board the vessel.

The Chincoteague exhausted all internationally accepted alternative means to stop the vessel while pursuing the Hermann all night in international waters. These means involved hailing the vessel by radio and loudhailer, flashing signal lights, hoisting flags, displaying blue law-enforcement lights, spraying water across the vessel's decks and down its stack, and firing warning shots across its bow.

No shots were fired at the Hermann until the vessel had clearly demonstrated its refusal to obey the lawful order to submit to a boarding and search. Only then did the Coast Guard cutter fire small-calibre rounds at the vessel's stern in an attempt to disable it - that is, to get it to stop. Disabling fire, it should be understood, describes action taken to force the vessel to stop by one of two means: incapacitate the engine or disable the steering mechanism. We repeat: disabling fire contemplates neither sinking the vessel nor inflicting harm on its crew. The Hermann, having received this fire, nevertheless continued to flee into Mexican territorial waters. The Chincoteague terminated pursuit approximately 15.5 nautical miles from the Mexican coast and at no time entered Mexican territorial waters.

The Government of Cuba has characterized the underlying basis for United States action as the "height of arrogance". It is most certainly not the "height of arrogance" for the United States to take steps, as in this case, aimed at

(Mr. Watson, United States)

fighting the international criminal activity of illicit trafficking in narcotics - steps which are entirely consistent with long-established international law and have the broad support of the international community.

Even Fidel Castro in his 1 February speech regarding this incident admitted that Panamanian flag vessels with Cuban crews have submitted in the past to United States Coast Guard inspection during "normal times". It is not up to the Government of Cuba to arrogate to itself the right to suspend international law when it unilaterally deems that times are not "normal". Cuba cannot claim the right to override the sovereignty of the flag country - a sovereignty enshrined in centuries of maritime law. If the Government of Cuba wishes to exercise jurisdiction over a vessel, it should register the vessel under the Cuban flag. It is not difficult to imagine the chaos that would result if all Governments behaved as Cuba's did on this occasion.

United States actions were taken with the authorization of the flag State and conducted in accordance with customary international law and practice codified in article 6 of the high seas Convention of 1958 and article 92 of the law of the sea Convention of 1982, and most recently in article 17 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Although the 1988 Convention is not yet in force, it has been signed by Cuba, the United States and Panama, and over 70 other nations. Seeking to encourage compliance with its provisions prior to the Convention's entry into force, the United Nations Conference for the adoption of this Convention also invited States

> "to the extent that they are able to do so, to apply provisionally the measures provided in the Convention pending its entry into force for each of them."

(Mr. Watson, United States)

For the information of the members of the Council, let me read the pertinent provisions of article 17 of the Convention.

Paragraph 1 requires the parties to

"co-operate to the fullest extent possible to suppress illicit traffic by sea, in conformity with the international law of the sea." (E/CONF.82/15, art. 17, para. 1)

Paragraph 3 continues:

"A Party which has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying marks of registry of another Party is engaged in illicit traffic may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures in regard to that vessel." (ibid, art. 17, para. 3)

Paragraph 4 specifies:

"In accordance with paragraph 3 or in accordance with treaties in force between them or in accordance with any agreement or arrangements otherwise reached between those Parties, the flag State may authorize the requesting State to, inter alia:

"(a) Board the vessel;

"(b) Search the vessel;

"(c) If evidence of involvement in illicit traffic is found, take appropriate action with respect to the vessel, persons and cargo on board." (ibid., art. 17, para. 4)

(Mr. Watson, United States)

The procedures set out in article 17 of the Vienna narcotics trafficking Convention were followed by the requesting State, the United States, and by the flag State, Panama, in this case. A letter from the Government of Panama attesting to this was circulated - as I have noted - on 5 February as Security Council document S/21127. Nowhere in international jurisprudence is the Government of the State of nationality of the master or any other crew member authorized to countermand the authority and sovereignty of the flag State.

If the authority to board and inspect could be frustrated by the refusal of a ship captain to honour such authority, the entire flag-State system of jurisdiction on the high seas would collapse. The fact that some or all of the crew may be of a nationality different from that of the flag State in no way diminishes the authority of the flag State. Again, if an inspecting vessel had to receive authority from each State with citizens serving as crewmen aboard or from whomever may have chartered the vessel, the entire flag-State system would be subverted.

In the Security Council's analysis of this incident we must be absolutely clear about several points.

The incident is not a spat between the United States and Cuba, although the Cuban Government, for reasons that are opaque, tries to make it one. The only States involved are the United States and Panama. Cuba has no standing to complain. The issue here is one of supporting international law. The Government of Cuba acted as if it had the right to frustrate a lawful inspection duly authorized by the flag State. That is a prescription for chaos at sea.

The real problem presented by this incident - and it is a very serious problem - is Cuban interference with the rights and obligations of the flag State. By instructing the crew of the Hermann to resist an authorized and routine boarding by Coast Guard officials, the Government of Cuba not only jeopardized the lives and

(Mr. Watson, United States)

safety of Cuban nationals but also demonstrated blatant disregard for legitimate law-enforcement efforts to investigate and interdict illicit narcotics trafficking in the region.

The actions of the Government of Cuba are inexplicable in the face of repeated Cuban assurances that the Cuban Government seeks to fulfil its international obligation to co-operate with the United States and other nations in combating illicit narcotics trafficking. Its behaviour in this case raises serious doubts about its commitment to this deadly serious international effort.

The Government of Cuba has alleged that this vessel was deliberately harassed by the United States Coast Guard because it had a Cuban crew and was carrying Cuban cargo. Yet, as we have already seen, the captain of the Hermann refused to identify the nationality of his crew and the Coast Guard cutter did not become aware of the Cuban nationality of the crew until after the authorization to use force had already been given. The Coast Guard cutter was interested in the Hermann because its location and configuration suggested it was a possible drug-smuggling vessel. The evasive and uncooperative answers of the Hermann's captain served to increase suspicion that the Hermann had something to hide.

(Mr. Watson, United States)

The Government of Cuba alleges that it invited the United States to participate in a search of the Hermann by Mexican authorities. This argument is irrelevant. The vessel was in international, not Mexican, waters. The Cuban Government had no authority to countermand the flag State's decision to allow the United States Coast Guard cutter to board the vessel immediately. Besides being irrelevant, the Cuban argument is false. There was no such invitation. The Government of Cuba has no authority to invite anyone into Mexican territorial waters or to commit the Mexican authorities to any course of action. The Mexican Government, which could have issued such an invitation, did not. As the Cuban note dated 31 January and circulated as document S/21121 states, the Cubans merely suggested that

"the United States could co-ordinate its action with representatives of the Government of Mexico". (S/21121, annex II, p. 4)

The Cuban suggestion reached the Chincoteague when the Hermann was only about one hour's sailing time from Mexican territorial waters, into which the United States vessel was not about to enter. Obviously, there was no time to co-ordinate a search, even if the Mexican authorities had issued an invitation.

The United States Coast Guard cutter was engaged in a normal and routine law-enforcement activity. The action taken by the United States was fully consistent with international maritime law and practice. The United States sought and received permission from the flag State, Panama, to stop and search the vessel.

The Government of Cuba does not deny that the Hermann was a Panamanian flag vessel. The Government of Cuba does not deny that the United States Coast Guard obtained permission from the flag State to board and inspect the vessel, in accordance with international maritime law and practice. The Government of Cuba admits that it raised no objections when in the past the United States Coast Guard

(Mr. Watson, United States)

searched Panamanian flag vessels with Cuban crews. The Government of Cuba inexplicably ordered the civilian crew of the Hermann to resist the lawful efforts of the Coast Guard to inspect the vessel as part of a routine law-enforcement operation.

The United States Coast Guard cutter resorted to authorized and appropriate force only after the continued unlawful refusal to stop and after exhausting all internationally recognized means of stopping the Hermann.

The action taken by the United States was fully consistent with international maritime law and practice. The action taken by the Cuban Government was not.

The United States sees no reason whatsoever for the Council to consider this routine law-enforcement matter, which in no way threatens international peace and security.

The PRESIDENT (interpretation from Arabic): I thank the representative of the United States of America for the kind words he addressed to me.

Mr. ALARCON DE QUESADA (Cuba)(interpretation from Spanish): Once again we have heard a statement from the United States representative that attempts to justify his country's actions on the pretext that they are, in his words, routine and normal activities carried out with considerable frequency, and by making selective references to an article of a convention that is not yet in force. I notice other activities referred to in other paragraphs of the same article that might also have been taken into account, had that article been in force at the time. The text of the Convention on the prevention and punishment of drug trafficking is clear.

In addition, the representative of the United States has made certain assertions with regard to which my views and my factual information differ. I too

(Mr. Alarcon de Quesada, Cuba)

can describe the events as they actually occurred. I have the version given by our own crew members. The United States chooses to reject that version and prefers the one proferred by the members of its Coast Guard.

I wonder why it is so inconceivable that the United States should accept the version that is based on substantial facts provided by the vessel of an obviously independent State, an obviously objective witness, a State like Mexico, which is a neighbour of both countries and with which both the United States and Cuba have long had, and still have, cordial and friendly relations.

It has been stated also that the United States authorities were unaware that the vessel was one used by a Cuban firm until after the incident had begun. In earlier statements I have referred to some other practices and routines that the United States has been implementing for nearly 30 years now, and, based upon them, I can state that this statement that the United States was unaware is not convincing: the United States knew that the Panamanian company, Guamar Shipping Company, the owner of the vessel, and the vessel itself, had a business relationship with Cuba, and I am quite sure that the United States also knew that the Hermann regularly plied its route between the ports of Moa and Tampico.

Just to add one precise fact, a concrete item of data, I would invite the representative of the United States to refer to an official United States publication, the Federal Registry, volume 54, number 209 - the issue of Tuesday, 31 October 1989. That publication refers to a document of a division of the Department of the Treasury, the Foreign Properties Bureau - document CSR part 515 - which contains what the United States calls the list of specially designated nationals of Cuba, a curious concept in modern law. In making up that list, the Foreign Properties Bureau decided to add to it a number of non-Cuban companies or individuals that are to be dealt with by the United States authorities

(Mr. Alarcon de Quesada, Cuba)

as if they were Cuban, under the legislation that regulates and controls the economic and trade blockade that has been in effect against my country for more than a quarter of a century now, as the United States representatives are well aware. To that list of Specially Designated Nationals of Cuba the United States decided to add, inter alia, a Panamanian company known as the Guamar Shipping Company.

The United States representatives are well aware that if there is any routine, usual or systematic practice being implemented by the United States Government it is to check into and pursue all over the world any company or any individual that engages in commercial or economic activities with my country, and that considerable amounts of money are allocated for that purpose. I have been informed that at its most recent session the United States Congress indeed allocated some millions of additional dollars to the funds of that Bureau of the Department of the Treasury.

Thus, they knew not only that the Hermann was carrying a Cuban cargo to Mexico, where it was to pick up a Mexican cargo going to Cuba, but that the company that owned the vessel was engaged in such activities, since, on 31 October 1989 they had arbitrarily decided to include it on their list as if it were Cuban.

I am sure that the United States Administration is not going to come here at this advanced stage and admit that its routine and systematic daily practice of investigation and search into all of Cuba's foreign trade is so inefficient that after almost 30 years it did not know something that had been appearing for a number of months in its own Federal Registry.

(Mr. Alarcon de Quesada, Cuba)

To repeat: We have not the slightest doubt that when they began to harass the Hermann they knew from the very start that it was a vessel that carried a Panamanian flag and belonged to a Panamanian firm, and that they were determined to use force against it to pursue it and "find out what it was doing". What it was doing was carrying Cuban cargo to Mexico and Mexican cargo to Cuba. It is hard to see that their version has anything to do with the truth.

It is perfectly clear from bilateral communications between Cuba and the United States that Cuba would never have dreamed of taking decisions that involved exclusively the sovereignty of Mexico. In a most friendly manner, we asked the Mexican authorities - for whom we have the greatest respect and who we are certain will act with the integrity, honour and dignity that has always characterized Mexico's policy - thoroughly to inspect the Hermann in order to put an end to any suspicions and campaigns against that vessel and its Panamanian owners.

To this day the United States sees something wrong with that offer. We note again that Mexico's Secretary of the Navy reported officially on the two inspections of the Hermann proving that the vessel had nothing to do with activities connected with drug trafficking. We most respectfully requested the Government of Mexico to make such inspections and informed the United States authorities of that request. As the representative of the United States knows, since this information is contained in a Security Council document, we could not make any decisions for Mexico, and if the United States wanted to participate in those activities it would have had to contact the Mexican authorities. Cuba will make no decisions for Mexico, much less for the United States.

I do not know why the United States did not want to do this or why it did not feel that Mexico had a role to play. After all, this incident took place in the Gulf of Mexico, in waters within Mexico's exclusive economic zone and in waters

(Mr. Alarcon de Quesada, Cuba)

whose coastal State was clearly Mexico. As I understand geography, Tampico can never be defined as a port on the United States coast; 15 miles from Tampico falls in waters under Mexican jurisdiction. That is clear from many international conventions, including those selectively cited before the Council, which contain various provisions that must be fulfilled. I repeat that, in our view, the Mexican Government fulfilled them in an exemplary, serious way that reflected the spirit of international co-operation that characterizes the Mexican Government.

Thus, there can be no doubt that as far as Cuba is concerned our Mexican brothers properly inspected this Cuban vessel that was being operated by a Cuban firm. But we have many reasons to suspect and doubt the integrity of the United States Coast Guard and the authorities of a Government that continues to claim it did not know that the Guamar Shipping Company and the Hermann were operated by Cubans, even though it has spent millions of dollars to learn that that firm was Cuban and involved in business with Mexico.

There are other reasons the United States authorities cannot be viewed as objective or impartial in cases such as this one. The fact that there have been 350,000 similar operations where they have interpreted international law arbitrarily does not legitimize any of those operations. Nor does the fact they used violence only 18 times in the past decade nullify the principle of international law by which the high seas cannot be used as an arena for the use of force.

The representative of the United States has on various occasions referred to parts of President Fidel Castro's statement on this incident, in which he stated that at the moment things are not exactly "normal" in the area, saying that Cuba had raised no protest at actions similar to that attempted by the Coast Guard. It is true that in the past we have permitted such a thing. On those occasions we had

(Mr. Alarcon de Quesada, Cuba)

information provided by the then legitimate authorities in Panama that there were arrangements in the Caribbean between the Panamanian Defence Forces and the United States Drug Enforcement Agency to facilitate some of these activities. Taking into account the wishes of a friendly country and our common determination to co-operate in fighting international drug trafficking, we agree that on a number of occasions vessels crewed by Cubans and flying a Panamanian flag were inspected in those waters. But in none of the United States explanations, either private or formal, such as that we heard today, did we hear about the current status of the arrangements between the Panamanian Defence Forces and the United States Drug Enforcement Agency. I have information that the Panamanian Defence Forces had been dissolved - in a rather dramatic, or traumatic way involving the use of force not merely on the high seas but on Latin American territory - and I do not know whether in recent days there have been further communications between the authorities that had agreed to those arrangements and the Americans.

In fact, I am somewhat confused, because it is my understanding that the agreements were concluded with Mr. Manuel Antonio Noriega when he headed the Panamanian Defence Forces. He is now known as prisoner No. 41,586. Perhaps the United States has made new arrangements with him, but we in Cuba know nothing about them. Perhaps having charged him of links with the drug trade, after arresting him and taking him to this country by force, they do not want to remember those earlier agreements.

To us the situation seems confusing and somewhat strange. In any event, the agreements between the Panamanian Defence Forces - now disbanded by force, by violence - and the United States Drug Enforcement Agency were not an international treaty; they are not registered with the United Nations Secretariat; nor do they bear the force of the genuine conventions that are in effect.

(Mr. Alarcon de Quesada, Cuba)

Repeated references only to portions of an article of a convention not yet in effect confer no right whatever on the United States to carry out police functions on the high seas. Such rights cannot be and have not been be recognized by anyone. There has been reference to chaos on the high seas and to a determination to continue systematically a policy clearly in contravention of current norms of international law. I wonder whether that is the message the United States wants to send to the international community on the eve of a special session of the General Assembly at which we shall meet to consider what measures could and should be adopted with a view to bringing about effective international action against this scourge.

We believe that no programme of action the United Nations may adopt or endorse in this connection can be based on fanciful interpretations of the law whereby some States arrogate to themselves powers not compatible with international law. Such a programme must be based on co-operation. It must be implemented not at gunpoint but on the basis of respect for the rights of all States in conformity with the principles of equality, independence and non-intervention which form the very foundation of this Organization.

Mr. WATSON (United States of America): I think the statements I made in my remarks a few minutes ago dealt satisfactorily with the points raised by the representative of Cuba. I do not think any useful purpose would be served by taking more of the Council's time in considering this matter.

The PRESIDENT (interpretation from Arabic): We have heard the last speaker for this meeting.

The next meeting of the Security Council to continue its consideration of the item on its agenda will be fixed in consultation with the members of the Council.

The meeting rose at 12.20 p.m.

UNITED
NATIONS

S

Security Council

PROVISIONAL

S/PV.2908
27 February 1990

ENGLISH

PROVISIONAL VERBATIM RECORD OF THE TWO THOUSAND
NINE HUNDRED AND EIGHTH MEETING

Held at Headquarters, New York,
on Tuesday, 27 February 1990, at 6.20 p.m.

President:	Mr. ALARCON DE QUESADA	(Cuba)
Members:	Canada	Mr. KIRSCH
	China	Mr. LI Luye
	Colombia	Mr. PEÑALOSA
	Côte d'Ivoire	Mr. ANET
	Democratic Yemen	Mr. AL-ASHTAL
	Ethiopia	Mr. TADESSE
	Finland	Mr. TORNUDD
	France	Mr. BLANC
	Malaysia	Mr. RAZALI
	Romania	Mr. MICU
	Union of Soviet Socialist Republics	Mr. SMIRNOV
	United Kingdom of Great Britain and Northern Ireland	Sir Crispin TICKELL
	United States of America	Mr. WATSON
	Zaire	Mr. BAGBENI ADEITO NZENGEYA

This record contains the original text of speeches delivered in English and interpretations of speeches in the other languages. The final text will be printed in the Official Records of the Security Council.

Corrections should be submitted to original speeches only. They should be sent under the signature of a member of the delegation concerned, within one week, to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

90-60311/A 6736V (E)

The meeting was called to order at 6.25 p.m.

ADOPTION OF THE AGENDA

The agenda was adopted.

THE SITUATION BETWEEN IRAN AND IRAQ

The PRESIDENT (interpretation from Spanish): The Security Council will now begin its consideration of the item on its agenda. The Security Council is meeting in accordance with the understanding reached in its prior consultations.

Following consultations among members of the Security Council, I have been authorized to make the following statement on behalf of the Council:

"The Security Council expresses its appreciation to the Secretary-General for his briefing on Iran/Iraq and on his integrated approach to the format, agenda and timetable for direct talks between the parties aimed at achieving the full implementation of resolution 598 (1987) of the Security Council.

"Accordingly, the Council fully supports the efforts of the Secretary-General aimed at the holding of appropriately structured direct talks between both parties under his auspices, for a period of two months and with a specific agenda, the elements of which he outlined to the members of the Council, that he would propose to the parties, on the basis of the concluding observations contained in his report of 22 September 1989.

"The Council calls upon both parties to co-operate fully with the Secretary-General in his ongoing efforts, considering that 18 months after the cease-fire between Iran and Iraq, resolution 598 (1987) has not yet been fully implemented.

"The Council requests the Secretary-General to report back to it at the conclusion of this stage of his efforts and to inform it on the results achieved and on the further steps he envisages for the full implementation of resolution 598 (1987) of the Security Council."

(The President)

The Security Council has thus concluded the present stage of its consideration of the item on the agenda.

The meeting rose at 6.30 p.m.